STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-580

February 13, 2003

PUBLIC UTILITIES COMMISSION
Amendments to Information Disclosure Rule (Chapter 306)

ORDER PROVISIONALLY ADOPTING RULE AND STATEMENT OF FACTUAL AND POLICY BASIS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

Through this Order, we provisionally adopt amendments to the Uniform Information Disclosure rule (Chapter 306) that would incorporate the recently implemented NEPOOL GIS as the means for determining and verifying the resource mix and emission characteristics contained on disclosure labels. We also provisionally adopt several other amendments based on our experience in implementing the current rule. These amendments are intended primarily to simplify the application of the rule.

II. BACKGROUND

Chapter 306 was among a series of rules that the Commission promulgated prior to March 1, 2000 to implement Maine's Electric Restructuring Act. The rule implements the legislative directive that the Commission provide for the dissemination of information that enhances the ability of consumers to effectively make choices in the competitive electricity market. 35-A M.R.S.A. § 3203(3). The current rule, which was designed to closely mirror the NECPUC model disclosure rule and the Massachusetts disclosure rule, does not allow for the use of tradable credits or certificates to satisfy the rule's requirements.[1] *Order Provisionally Adopting Rule*, Docket No. 98-708 at 2-3 (February 23, 1999).

Subsequent to the adoption of Chapter 306, NEPOOL began working to develop a tradable "attribute" certificate system. This system, known as the Generation Information System or GIS, has recently been implemented. The system allows for the trading of electricity attributes separate from the energy commodity and was specifically designed to support various public policy initiatives of the several New England states, including Maine's information disclosure requirements.

---

[1] The model rule relied on the "tracking" of contractual paths of kilowatt-hours for verification rather than the trading of attribute credits or certificates separate from the energy sale.

As a result of the development of the GIS, we initiated an Inquiry on June 4, 2002 (Docket No. 2002-300) to examine whether the use of tradable certificates pursuant to the GIS should be incorporated into our information disclosure rule.[2] We also indicated that the Inquiry would consider other modifications that would improve the operation of the rule. Central Maine Power Company, Bangor Hydro-Electric Company, the Public Advocate, Independent Energy Producers of Maine, Constellation Power Source, Inc., Union of Concerned Scientists, Strategic Energy LLC, Jon Reisman, and Maine Public Service Company provided comments during the Inquiry. Most of the commenters in the Inquiry supported the use of GIS certificates for purposes of complying with the information disclosure requirements, and no commenter opposed the use of the system.

III. RULEMAKING PROCESS

On October 8, 2002, we issued a Notice of Rulemaking and a proposed rule that would amend Chapter 306 to incorporate the use of GIS certificates for purposes of satisfying the rule's requirements. We also proposed several amendments to improve the rule's operation and to simplify its language and requirements.

Consistent with rulemaking procedures, interested persons were provided an opportunity to provide written and oral comments on the proposed rule. Central Maine Power Company (CMP), Constellation Companies[3] (Constellation), Independent Power Producers of Maine (IEPM) and Houlton Water Company (HWC) commented on the proposed rule. These comments are discussed below.

Pursuant to 35-A M.R.S.A. § 3203(3), the information disclosure rules are "major substantive rules" as defined and governed by 5 M.R.S.A. §§ 8071-8074. Accordingly, the Commission has "provisionally" adopted the amendments to Chapter 306 and will present the amended rule to the Legislature. The Legislature will review the provisional rule and either authorize its final adoption (by approving the rule with or without change or by taking no action) or disapprove its adoption. 5 M.R.S.A. § 8072.

---

[2] The Inquiry also examined whether to incorporate the use of GIS certificates in our eligible resource portfolio requirement (Chapter 311). We have initiated a rulemaking proceeding and issued a proposed rule that would require the use of GIS certificates for verifying compliance with that requirement. *Amendments to Eligible Resource Portfolio Requirement Rule (Chapter 311)*, Docket No. 2002-494 (Sept. 3, 2002).

[3] The Constellation Companies are Constellation Power Source, Inc., Constellation Power Source, LLC, and Constellation NewEnergy, Inc.

IV. DISCUSSION OF PROPOSED AMENDMENTS

A. Overview

The provisional rule amends several provisions to incorporate the use of the GIS for purposes of determining and verifying resource mix and emission information contained on the disclosure label. The GIS was specifically designed to facilitate compliance with various public policy initiatives of the several New England states, including Maine's information disclosure rule. We view the implementation of the GIS as a substantial step in the evolution of competitive electricity markets. The system should allow for the creation of secondary markets for attribute certificates, substantially reduce supplier costs of complying with a variety of differing New England state requirements, and greatly simplify verification efforts.

The provisional rule adopts GIS for service to customers in the ISO-NE control area, but essentially maintains the existing requirements for service to customers in northern Maine. The GIS is only applicable to service in the ISO-NE control area, and there is currently no attribute system in northern Maine. We agree with the commenters in the Inquiry that, due to the small size of the market, a GIS-type system in northern Maine would likely be cost-prohibitive. As a result, the provisional rule contains separate compliance requirements depending on whether service is provided in the ISO-NE control area or the northern Maine market.

As noted above, the current rule was designed to mirror the NECPUC model disclosure rule, as well as the Massachusetts disclosure rule, in both substance and form. Commenters in the Inquiry generally agreed that the development of the GIS has diminished the usefulness of the NEPUC model rule and that regional consistency is now best promoted through the use of the GIS. We agree. We also believe that, as a general matter, improved operation of the rule should have a higher priority than maintaining strict uniformity with various provisions of the model rule or rules in other New England states. We thus provisionally adopt a variety of substantive changes to the rule. We also propose to eliminate a significant amount of the language in the rule (initially taken primarily from the model rule) to remove unnecessary or confusing detail or to facilitate supplier compliance.

B. GIS Certificate Dispute

An ongoing dispute over the rights to certain GIS certificates raises a substantial question as to whether we should proceed towards adoption of the GIS. The dispute is over rights to GIS certificates assigned to qualifying facilities (QFs) that have existing power purchase agreements with transmission and distribution (T&D) utilities that predate the implementation of the NEPOOL GIS. The disputed issue is

whether the utilities are entitled to both the energy commodity and the "attributes" associated with the QF generation.[4]

The issue is of importance because the T&D utilities have sold their entitlements to QF power under a 3-year contract that terminates February 2005. It is reasonable to expect that the entitlements purchaser assumed it was acquiring the value associated with the attributes of the QF power. If the utilities are unable to obtain the QF certificates so they could be transferred to the entitlements purchaser, the adoption of the GIS in Maine could frustrate legitimate expectations of the entitlements purchaser regarding the attributes of the QF power.

Moreover, the issue could continue to have importance subsequent to 2005. To the extent the QF certificates have value in that they satisfy Maine or other state requirements, or can be used to comprise a "green product," that value would flow to ratepayers as an offset to stranded costs.

The Commission has initiated an Investigation and has tentatively concluded that the utilities have the right to the GIS certificates associated with QF contracts and that the certificates should be transferred to the entitlements purchaser. *Investigation of GIS Certificates Associated with Qualifying Facility Agreements*, Docket No. 2002-506. QFs commented in the Investigation that the matter was a contractual dispute and that the Commission lacks jurisdiction to resolve the matter. The Commission's Investigation is pending and the ultimate resolution of the matter (which may involve court proceedings) may not occur for a substantial period of time.

To avoid postponing the benefits of the GIS to the participants in Maine's retail electricity market, we have decided to proceed with the incorporation of the GIS for purposes of our disclosure rule. We, will, however, provide for an explicit exception that will allow purchasers of the QF entitlements, who do not receive associated GIS certificates, to use the entitlements to verify the accuracy of label information (section 2(H)(2)). This will ensure that the legitimate expectations of the current entitlements purchaser are not frustrated. In addition, the exception will also apply to future entitlements purchasers. This is consistent with our view that one purpose underlying the Legislature's inclusion of QF entitlements as eligible resources under the portfolio requirement statute, 35-A M.R.S.A. § 3210, was to enhance their value, thus reducing the amount of stranded costs to be paid by ratepayers.

C. Definitions (Section 1)

The provisional rule adds definitions of the "GIS" and "GIS Certificates." The definitions refer to the recently implemented NEPOOL system. The rule also adds a definition of "ISO-NE control area" and "residential and small commercial customers" and deletes the definitions of "northern Maine" and "marketer" because those terms are

[4] The dispute involves CMP and BHE. Because the GIS is not applicable in northern Maine, the disputes does not involve Maine Public Service Company (MPS).

not used in the provisional rule. Commenters supported the changes to the definitions section.

D. Larger Customer Applicability (Sections 2(A))

The provisional rule expands the applicability of the disclosure requirements to suppliers that serve medium and large customers by deleting the "applicability" provision of the rule. The current rule requires disclosure labels to be provided to residential and small commercial customers upon initiation of service and every three months thereafter; disclosure information is required to be provided to larger customers only upon request. The provisional rule (section 2(E)) requires medium and large customer suppliers to provide disclosure labels to their customers upon initiation of service and every 12 months thereafter.

Subsequent to the initial enactment of the Restructuring Act and promulgation of Chapter 306, the Legislature modified the Act to provide that all CEPs (regardless of the customer sector they serve):

> Must provide at least once annually to a customer any information disclosures required by the commission pursuant to subsection 3 [of section 3203] . . . .

35-A M.R.S.A. § 3203(4-A)(G). We have interpreted the provision as requiring suppliers who serve customers in the medium and large classes to provide label information similar to that required for service to smaller customers once every 12 months. The commenters in the Inquiry generally agreed that this interpretation is consistent with the intent of the provision. We have thus modified the provisional rule to implement the annual disclosure requirement for service to medium and large customers.

However, in our Notice of Rulemaking, we sought comment on whether we should ask the Legislature to remove the requirement that medium and large customers be provided label information once every 12 months. Constellation and CMP commented that the requirement should be eliminated. Constellation stated that medium and large customers currently access comparative pricing and product information directly from suppliers and thus sending labels on a predetermined schedule is unnecessary and imposes costs on suppliers. The IEPM stated that the label requirement should remain applicable to larger customers because a significant percentage of Maine's businesses have indicated an interest in "green" power.

Although we do not dispute the IEPM's statement that many businesses may be interested in considering green power, we generally agree with Constellation that larger customers tend to have the sophistication to request product information from prospective suppliers and a requirement that a label be sent to all customers each year is an unnecessary burden. We will therefore suggest to the Legislature that it consider modifications that would remove the annual requirement and require instead

that the suppliers provide the information upon request or place the information on their webpage.

E. Price Information (Formerly Section 2(B)(2))

The provisional rule removes the requirement that the label contain price information. We delete this requirement because, as discussed below, it is impractical in the context of the competitive electricity market.

The current rule requires that the label provide average unit prices for services that have multiple price components (e.g., fixed and variable charges) or vary by usage characteristics.[5] This approach was intended to allow customers to easily compare the prices of various service offerings. However, because the usage patterns of individual customers vary widely, there is no meaningful way to provide average unit price information that is representative of the customer class. Thus, rather than requiring the disclosure of generic class average rates, the proposed rule would have required that the label contain actual prices.

In response to the proposed rule, CMP commented that it did not see the use in simply restating a customer's existing rates which are presented on the monthly bill, and suggested that pricing information be eliminated so that the label would be a source for resource mix and emissions information only. Constellation agreed with the Commission's conclusion that the current rule's requirement that average rates be presented can confuse customers.

We agree with CMP's suggestion that the label be a source for only resource mix and emissions information. As stated in the Notice of Rulemaking, our experience is that competitive price offerings are often tailored to individual customer characteristics and are only available for short periods of time. Thus, in most cases, it would be impractical for a label to display a supplier's prices. For this reason, the proposed rule specified that only generally available rates need to be displayed on the label. However, unlike long distance telephone service, even generally available rates to smaller customers are not likely to be available for any significant length of time. Thus, at any point in time, suppliers' customers are likely to have different rates. This results in two options. Either suppliers would need to prepare individual labels for each of its customers or they would need to send labels to customers containing the then generally available rates that would differ from the rates their customers were actually paying.

It was never the intent of the disclosure rule for suppliers to have the cost and burden to periodically prepare individualized customer labels, and the provision of labels to customers containing currently available rates (that are not actually available to

[5] The average prices are derived by generic class load profiles.

existing customers)[6] is likely to be confusing. It is therefore our view that the best course of action is to remove the requirement that the label contain price information.

Standard offer service is an exception to the discussion above in that the service does have generally available rates for a relatively longer period of time. However, the primary purpose of the disclosure labels is to provide comparative information. It thus appears contrary to the purposes of the disclosure rule to require standard offer labels to display prices, while competitive offerings would not contain such a requirement. For that reason, we conclude that price information should not be included on the disclosure label even for standard offer customers.

F. Customer Information (Section 2(B)(2))

The proposed rule modified the customer service provision to clarify that the supplier's phone number must be on the label and that the phone number is for the purpose of enabling customers to obtain information regarding the label. All commenters supported this change and it is incorporated into the provisional rule. Additionally, the IEPM commented that, based on recent experience in attempting to acquire information about a disclosure label, better customer service is needed. In response, we have added a provision to the rule that specifies that CEP representatives who answer telephone calls must have sufficient knowledge to respond to reasonable customer inquiries regarding the label.

G. Resource Portfolio (Section 2(B)(3)(a))

The provisional rule modifies the provisions governing the determination of a supplier's resource portfolio to require that the resource mix and emission characteristics be determined on the basis of GIS certificates for service in the ISO-NE control area. In doing so, the extensive language in the current rule that details the determination of the resource portfolio is eliminated. The requirements for service in northern Maine remain substantially unchanged, though we have replaced some specific language with more general requirements.

The current rule contemplates that the label would display the supplier's regional New England resource mix. The GIS, however, allows regional suppliers to have resource portfolios for individual states through the use of GIS sub-accounts. The provisional rule requires suppliers to have a Maine GIS sub-account so that the corresponding resource portfolio will be Maine-specific rather than regional. In addition, the provisional rule requires suppliers that serve customers in both the ISO-NE control area and in northern Maine to combine resources into a single statewide resource portfolio unless the supplier disaggregates its portfolio into separate products based on control area.

---

[6] The practice in the industry is that customers contract to purchase electricity for specified terms.

The commenters generally supported these modifications and they are unchanged from the proposed rule.

H. Reporting Period (Section 2(B)(3)(b))

The provisional rule specifies that the label reporting period for the resource portfolio is the most recent 12-month period for which the necessary information is available. This provision is the same as that in current rule. The proposed rule would have required the label period to be the most recent calendar year for which information was available so that the label will show a resource mix that complies with Maine's 30% eligible resources portfolio requirement.[7] In implementing the current rule, we have received many questions as to why labels often do not show compliance with Maine's portfolio requirement. One reason for this discrepancy is the difference in reporting periods between the two rules. As noted in our Notice of Rulemaking, however, the downside to the approach in the proposed rule is that customers receive increasingly older information regarding the supplier's portfolio throughout the year. We also noted that the GIS certificate trading period occurs approximately six months after the end of the applicable calendar quarter with the consequence that for the first half of a given year, the proposed rule approach would result in a reporting period that is the year prior to the previous year.

Constellation supported the proposed rule approach so that the label would be consistent with the portfolio requirement reporting period, while the IEPM expressed concern about the time lapse between the delivery of the electricity and the customer's receipt of information about the characteristics of that electricity. CMP expressed concern regarding either label reporting approach as it applies to standard offer service. Essentially, CMP's concern derives from the change in standard offer providers in March and suggests that there be a special provision for standard offer labels stating that the reporting period should be the most recent 12-month period for which information is available or a lesser period if 12 months of data is not available.

The provisional rule requires that the most recent 12-months of information be used because it is our view that, on balance, it is more important that customers receive the most recent information available than it is for the label to always show compliance with the 30% portfolio requirement. If calendar year information were required, the delays inherent in the GIS system would mean that for the first six to nine months of each year, customers would receive resource mix and emission information that would not be based on the most recent prior calendar year, but on the previous calendar year. The vintage of such information would greatly decrease its usefulness, while we believe that discrepancies between the label resource mix and the portfolio

[7] Our eligible resource portfolio requirement rule (Chapter 311) requires compliance over each calendar year.

requirement can reasonably be explained to customers.[8] Accordingly, we have decided to incorporate use of the most recent 12 months of information into the provisional rule.

We decline to accept CMP's suggestion for a special provision regarding standard offer labels, because the provisional rule essentially incorporates CMP's suggested approach for all electricity service. The provisional rule, in effect, maintains the current rule's treatment of circumstances in which 12 months of the necessary data is not available. Under the provisional rule, a provider that has less than a year, but more than three months, of available data is required to use its actual data for purposes of the label, while a provider that has three months or less of available data is require to use reasonable projections of its resource mix and associated emissions data over the upcoming 12-month period.

I. Disaggregation of Resource Portfolio (Section 2(B)(3)(d))

The provisional rule continues to allow providers to disaggregate their portfolios into separate products. The provisional rule specifies that, for service in the ISO-NE control area, suppliers must have a separate GIS sub-account for each disaggregated product. The commenters generally supported this provision and it is unchanged from the proposed rule.

J. Fuel Mix (Section 2(B)(4)

The provisional rule requires CEPs to display a fuel mix on disclosure labels that consist of a list of specified fuel sources. The rule provides that the labels list the more commonly used fuel sources (biomass, coal, fossil fuel, cogeneration, hydro, municipal waste, natural gas, nuclear, oil) regardless of whether they are in the CEPs' actual fuel mix; other fuel sources (fuel cells, geothermal, solar, tidal, wind) may be listed only if actually a part of the provider's fuel mix. The rule also provides that fuel sources that are eligible for Maine's portfolio requirement, 35-A M.R.S.A. § 3210, be separately listed on the label.

The proposed rule would have removed any requirement that all fuel types listed in the rule be presented on the label regardless of whether the provider's portfolio contains a particular fuel source. In our Notice of Rulemaking, we stated that it would be preferable and less confusing for providers to only list those sources actually in their mix, rather than to list numerous sources with corresponding zero percentages.

CMP generally concurred with the proposed rule. Constellation favored a standardized label to enhance the ability to compare products and suppliers.

[8] Upon final adoption of the changes to both the disclosure and portfolio rules, the difference in reporting period will be the only reason that the label resource mix would deviate from showing compliance with the portfolio requirement. Under the current rules, other differences could account for a difference (e.g., different treatment for electricity imports).

Constellation stated that the label should contain all fuel mix categories as defined by NEPOOL (with zero percent being used for products not utilizing a certain fuel) to facilitate comparison to the NEPOOL average mix.

The provisional rule adopts a middle approach whereby the commonly used fuel sources must be listed on the label, while sources that have minimal use in the region are listed only if actually a part of the CEP's portfolio. This facilitates the comparison of fuel sources as suggested by Constellation, but avoids the repeated listing of several fuel sources with zero percentages.

We have maintained the list of fuels contained in the proposed rule. This list contains commonly-used terminology for fuel sources and is consistent with sources listed as eligible for Maine's portfolio requirement. Additionally, we believe the list in the rule can be readily compared to the NEPOOL fuel mix. However, we have added a provision that specifically allows our Director of Technical Analysis to authorize alternative presentations of the fuel mix on the labels to provide for individualized treatment if desirable or for displays that may be more understandable to customers.

K. Emissions (Section 2(B)(5))

The provisional rule maintains the basic requirement in the current rule that carbon dioxide, nitrogen oxides and sulfur dioxide be included on the label and compared to the New England regional average. The GIS does track additional emissions;[9] however, as pointed out by several commenters in the Inquiry, the three emissions on the current label are generally of most interest to the public and we are concerned that adding too much information to the label would be confusing to consumers. The provisional rule does allow the Commission by order to require that other emissions be displayed on the label and interested persons may therefore petition the Commission to include other emissions. The provisional rule also substitutes the more neutral language "emissions," in place of "pollutants." No commenter objected to this provision and it is unchanged from the proposed rule.

The provisional rule specifies that the Commission may determine carbon dioxide offsets by order either with respect to individual or certain categories of generating facilities. Some commenters in the Inquiry had stated that the rule should provide that carbon dioxide emissions for biomass facilities should be considered zero because of the absorption of carbon dioxide during the biomass growth cycle. As indicated in our Notice of Rulemaking, we did not incorporate a general biomass offset in the proposed rule and continue to believe that a proceeding specifically initiated to consider the issue would be a superior approach. We thus invited advocates of biomass offsets to file a petition pursuant to the rule asking the Commission to consider the biomass offset issue. Such a petition has been filed, and the Commission's consideration of the matter is pending. *Petition to Permit Biomass and Landfill Gas Facilities to Net CO_2 Emissions*, Docket No. 2002-745.

[9] These are CO, PM and PM10, mercury, and volatile organic compounds.

L. Format of the Label (Section 2(B)(6))

The provisional rule contains a redesigned format of the label to make it more understandable to customers. The resource mix portion of the label is modified to show the portion of the portfolio made up of eligible resources under Maine's portfolio requirement and a column is added indicating the New England mix for comparison purposes. In presenting air emission information, the label required by the provisional rule contains actual emission figures and percentage comparisons to regional averages, rather than the bar graph required by the current rule. Finally, the provisional rule modifies the label language requirement to make the language consistent with the rule changes and more understandable. As suggested by a commenter in the Inquiry, we have also made the label language more neutral by removing references to "pollutants," we did not, however, further modify the carbon dioxide description that was taken for the most part from the NECPUC model rule. Commenters generally concurred with the proposed modifications to the label format and they are unchanged from the proposed rule.

M. Distribution of Labels (Sections 2(E))

1. Initiation of Service

To provide greater flexibility in marketing to customers, the provisional rule removes the requirement that the label be provided with the terms of service document. The provisional rule maintains the requirement that the label be provided before the initiation of service. There were no objections to these modifications and they are unchanged from the proposed rule.

2. Distribution Timing

The provisional rule includes provisions that specify that medium and large customer suppliers must provide a label once every 12 months. The current requirement that labels be provided to residential and small non-residential customers quarterly is unchanged in the provisional rule. However, we have clarified that CEPs may provide their quarterly labels to all of their customers at the same time, rather than to each individual customer every three months. We also modified the standard offer provision so that labels are distributed three months after the beginning of service by a new provider rather than six months as required in the current rule.

Constellation commented that information should be provided to medium and large customers on an "as requested" basis, and that CEPs should have the option of providing such information through the Internet or by the distribution of a hard copy upon request. Constellation also commented that the rule should not require the provision of labels to individual customers every three months after their start of service date, but should allow for the efficiencies of "mass mailings" by requiring labels for small customers be sent on a calendar quarter basis. HWC commented that labels

to standard offer customers be provided within six months after the initiation of standard offer service and every 12 months thereafter. CMP questioned the rule change whereby labels would be sent three months after the initiation of service by a new standard offer provider. CMP's concern is over the availability of relevant data so soon after the initiation of service.

As discussed in section IV(D) above, our view is that the current law requires the provision of label information to medium and large customers once every 12 months. As such, we are unable to adopt Constellation's "as requested" approach, but will ask the Legislature to consider the issue during its review of this provisional rule. We also decline to adopt HWC's recommendation that labels be provided to small customers every 12 months. When initially adopted as a provisional rule, Chapter 306 required labels to be provided every six months. *Order Provisionally Adopting Rule*, Docket No. 98-708 (Feb. 23, 1999). However, during its review process, the Legislature required labels to be provided every three months. Resolves 1999, ch. 34. For this reason, we are reluctant to change the 3-month requirement. Consistent with the 3-month approach, we have modified the rule so that small standard offer customers are provided labels quarterly, after the initiation of service by a new standard offer provider. This change places standard offer providers on a more equal basis with competitive providers, which must provide labels quarterly after the initiation of service. CMP's concern about the availability of information is addressed by the provision in section 2(B)(3) of the provisional rule which governs the information to be provided when less than 12 months of necessary data is available.[10] Finally, the provisional rule incorporates Constellation's suggestion that providers be able to take advantage of the cost savings of mass mailing by specifying the labels may be sent to all customers at the same time on a quarterly basis.

3. Competitive Provider Labels

The provisional rule allows the Commission by order to require transmission and distribution (T&D) utilities, upon the request of a competitive supplier, to prepare and distribute labels pursuant to Commission-approved rates.

The proposed rule would have mandated the provision of this service by T&D utilities upon the request of a supplier. The current rule requires T&D utilities to prepare and distribute labels for standard offer providers, but not competitive providers. As noted in our Notice of Rulemaking, our Staff, in the context of conducting our recent legislative study of standard offer service, had been told by competitive providers that utility preparation and distribution of labels provides standard offer service providers with an advantage and that competitive suppliers could benefit from the same service. We thus proposed to require utilities to provide the same service to competitive providers that they currently provide for standard offer providers.

[10] It is worth noting that the label resource mix and emission data is not intended to correspond with the actual service that will be provided to customers, but rather a "backwards" look at the resources the supplier previously used to serve its Maine load.

CMP opposed the proposed requirement, stating that the current cost advantage of standard offer providers has nothing to do with the fact that the T&D utility prints and mails the disclosure labels. Rather, the cost advantage results from the available bulk discounts in both printing and postage. As a result, CMP states that competitive suppliers will not gain any incremental benefit from having T&D utilities responsible for producing and distributing disclosure labels.

We do not disagree with CMP's view as to the cause of the cost advantage for standard offer labels. However, in our standard offer study, we discussed the possibility of requiring utilities to provide this service to all providers on an "averaged-cost" basis as one of a package of measures that might help stimulate a competitive market for small customers. We decided to formally consider these measures in a proceeding to be conducted early 2003. For this reason, we have modified the rule to allow the Commission to order the provision of this service by T&D utilities if we subsequently determine that such action is in the public interest.

N. Verification (Section 2(H))

1. Alternative Means

The provisional rule modifies the verification section to incorporate the GIS as the method for demonstrating compliance with respect to service in the ISO-NE control area, but allows the Commission to accept alternative means of verification upon a showing that the provider reasonably relied on the Commission's prior rules or for other good cause. Although the GIS was implemented mid-year 2002, the system's first trading period was for service during the first quarter of 2002. To correspond with the start of GIS certificate trading, the provisional rule adopts use of the GIS beginning with service in January 2002. Because the GIS is only applicable in the ISO-NE control area, the verification approach remains essentially the same under the provisional rule for service in northern Maine.

A regional tradable certificate system works as designed if it is the sole means of verification throughout the region. One of the primary purposes of the GIS is to prevent the double counting of attributes, a purpose that is necessarily defeated if other means of verification are allowed.[11] Nevertheless, we have allowed for alternative means of verification as a transitional matter. Retail electricity providers in Maine may have reasonably relied on our existing disclosure rules when contracting for

[11] For example, a generator could sell the attributes of its resource to one retail supplier and the energy commodity to another supplier. If alternative means of verification were allowed, there would be a double counting of attributes if both the certificates and the purchase of energy were used to verify compliance.

supply prior to the development of the GIS [12] and it is thus appropriate to allow for exceptions in such cases or for other good cause. We note that, with the possible exception of the QF entitlements purchaser, we expect our authorization of alternative verification means to be rare and to diminish over time as legitimate claims of reliance naturally expire. The provision allowing for alternative verification means addresses CMP's comments that the entitlements purchasers have an indefinite opportunity to use alternative means to demonstrate compliance.

2. Rejection of Certificates

The provisional rule contains a provision that allows the Commission to reject the use of certain certificates for purposes of the label if it finds that the certificates do not reflect accurate information, that rejection of certificates is necessary to avoid the double counting of attributes, or for other good cause. Under the GIS, the generators input the information contained on their certificates. As a result, it is possible that the Commission, upon investigation, may conclude that information on certain certificates is not accurate and thus may reject their use for purposes of Maine rules. We have also added an explicit provision that the Commission may initiate investigations and obtain information from generation facilities to verify the accuracy of certificate information. The provision specifies that the Commission may reject certificates if a generator fails to provide information relevant to determining the accuracy of certificate information.[13]

The proposed rule did not specify the double counting of attributes as a possible grounds for rejecting certificates. However, there may be circumstances in which it would be appropriate for the Commission to reject certificates to avoid double counting of electricity attributes. We do not decide now any circumstances in which we would take such action, but the rule provides the Commission with authority to act to avoid double counting when warranted.

The IEPM commented that the "good cause" provision is too vague and that inaccurate certificate information should be the only valid reason to reject certificates. We disagree. Good cause is a commonly used standard and is the standard generally contained in the waiver provisions of Commission rules (including Chapter 306). Although broad, standards such as "good cause," "just and reasonable," and "public interest" have proven workable and are necessary to allow decision makers to consider varied and unforeseen circumstances. The GIS is new, as is the concept of

[12] As discussed in section IV(B) above, the QF entitlements purchaser is such a supplier.

[13] It is possible that an entity may have in good faith purchased certificates without knowing that a generator has not cooperated in a Commission investigation pursuant to this rule. In such a circumstance, it is our expectation that we would not reject use of such certificates. We would instead act to invalidate certificates before they could be transferred.

trading electricity attributes separate from the energy commodity. As such, it is impossible to predict all circumstances that could arise in the future that might warrant the rejection of GIS certificates. Although we expect such circumstances to be rare, it is appropriate for the Commission to have the flexibility to consider future circumstances and to decide issues involving certificate rejection under a good cause standard.

The IEPM also commented that the Commission's investigatory authority is to broad, and that the rule should specify that information may be sought only to the extent it is relevant to information on the disclosure label and that generators may object to information requests on grounds that it is irrelevant or commercially sensitive. In response, we have incorporated language that specifies the information must be relevant to information on the disclosure labels. We have not included any specific language regarding objections to information requests because such objections can be made consistent with Commission general rules of practice.

3. Annual Reports

The provisional rule changes the annual reporting deadline from May 1 to July 1 of each year. We make this change to be consistent with our change to the portfolio requirement (Chapter 311) annual report filing date. We changed the portfolio requirement annual report deadline to July 1 to accommodate the timing of GIS trading periods and the resulting availability of information. For the convenience of suppliers, we modify the disclosure rule annual report filing date to be consistent with that of the portfolio requirement.

Accordingly, we

O R D E R

1. That the attached amendments to Chapter 306, Uniform Information Disclosure and Informational Filing Requirements, are hereby provisionally adopted;

2. That the Administrative Director shall submit the provisionally adopted amendments and related materials to the Legislature for review and authorization for final adoption;

3. That the Administrative Director shall file the provisionally adopted amendments and related materials with the Secretary of State;

4. That the Administrative Director shall notify the following of the adoption of the provisional rule:

a. All electric utilities in the State;

b. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;

c. All licensed competitive electricity providers;

d. All commenters in *Inquiry into Modifications of Portfolio Requirement and Disclosure Rules,* Docket No. 2002-300.

e. All person listed on the service list or filed comments in this Rulemaking, Docket No. 2002-580; and

5. That the Administrative Director shall send copies of this Order and the attached provisional rule to the Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115 (20 copies).

Dated at Augusta, Maine, and this 13th day of February, 2003.

BY ORDER OF THE COMMISSION

_____

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.